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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,170	01/24/2002	Scott A. Garver	GRD0186.US	9483

7590

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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/056,170

Applicant(s)

GARVER, SCOTT A.

Examiner

Ruth C Rodriguez

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3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8,11,13 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,11,13 and 16-20 is/are allowed.
- 6) ☒ Claim(s) 21-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olewinski et al. (US 5,598,994).

Olewinski discloses an electrical tie (20) comprises an elongate strap (24) having opposing sides and an end (Figs. 1-9). At least one the side includes serrations and a head (10,21,22) attached to the end (Figs. 1-9). The head includes a locking slot (22) that receives the strap therein and interconnects with the serrations (Figs. 1-9). The head includes a shoulder (10) with an inside perimeter defining a mounting through-hole (18). The inside perimeter is a polygonal shape with at least five sides (Figs. 2 and 5). Olewinski fails to disclose that the polygonal shape is regular. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a regular polygonal shape instead of the polygonal shaped disclosed by Olewinski since a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Especially since the applicant fails to disclose any advantages derived from why having all sides being the same length.

Oiewinski also disclose that:

- The mounting through-hole extends in a direction generally coincident with said locking slot (Figs. 1-9).
- The mounting through-hole has a generally cylindrical shape (Figs. 2 and 5).
- The elongate strap has a longitudinal extension (Figs. 1-9). The head includes a hinge section (21) that can allow hinged movement of the head in a direction transverse to the longitudinal extension (Figs. 1-9).

***Allowable Subject Matter***

3. Claims 8, 11, 13 and 16-20 are allowed.

***Response to Arguments***

4. Applicant's arguments, see page 7, lines 7-22 and page 8, lines 1-7, filed 12 October 2004, with respect to claims 21 and 22 have been fully considered and are persuasive. The rejection under 35 U.S.C. 102(b) as being anticipated by Liu of 12 July 2004 has been withdrawn.

5. Applicant's arguments, see page 8, lines 17-22, filed 12 October 2004, with respect to claims 21 and 22 have been fully considered and are persuasive. The rejection under 35 U.S.C. 102(b) as being anticipated by Holder of 12 July 2004 has been withdrawn.

6. Applicant's arguments, see page 9, lines 1-7, filed 12 October 2004, with respect to claims 21, 22 and 24 have been fully considered and are persuasive. The rejection under 35 U.S.C. 102(b) as being anticipated by Arthur et al. of 12 July 2004 has been withdrawn.

7. Applicant's arguments filed 12 October 2004 have been fully considered but they are not persuasive for the rejection under 35 U.S.C. 102(b) as being anticipated by Olewinski. The Applicant amended claim 1 by adding that the mounting hole has a regular polygonal shape with at least five sides. The Applicant argues that the mounting hole disclosed by Olewinski fails to meet this newly recited limitation. The Examiner acknowledges that Olewinski fails to disclose that all the side of the polygon has equal lengths however the applicant's disclosure fails to provide any advantage derived from having all the sides of the polygon provided with equal lengths. Therefore, it would have been obvious matter of design choice to since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Holmes (US 3,461,510), Wells (US 3,717,906), Olewinski et al. (US 5,598,994), Logan (US 5,758,390), British Patent Document GB 2 166 188 A and European Patent Documents EP 0 540 475 A2, EP 583 554 A1 and EP 0 875 466 A1 are cited to show state of the art with respect to ties having a through-hole separated by a hinge from the locking hole to allow rotation of the through-hole with respect to the locking hole.

Lankton et al. (US 4,573,242), Shely et al. (US 4,788,751), Lundberg, Jr. (US 5,183,301), Shely (US 5,295,285), Marogil (US 5,304,188), Geisinger (US 5,193,254) and Pettersson (US 6,594,867 B1) are cited to show state of the art with respect to ties having three ribs on one side.

Fortsch (US 5,317,787) and Georgopoulos et al. (US 5,524,945) are cited to show state of the art with respect to ties having ribs provided with teeth.

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Hancock-Bogese et al. (US 5,848,771), Teagno et al. (US 5,884,367), Davignon (US 5,911,368), Nelson et al. (US 6,185,792) and International Patent Document WO 96/18554 are cited to show state of the art with respect to ties allowing insertion and engagement of the elongated strap through any of the two sides of the locking hole.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (703) 308-1881. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115.

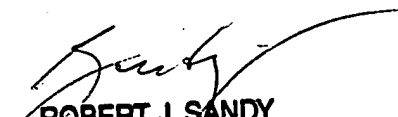
Submissions of your responses by facsimile transmission are encouraged. Technology center 3600's facsimile number for before and after final communications is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

RJR  
rcr

January 7, 2005

  
ROBERT J. SANDY  
PRIMARY EXAMINER